

**SUN BROS. APPLIANCES, INC., PLAINTIFF AND APPELLANT, VS.
ANGEL AL. CALUNTAD, DEFENDANT AND APPELLEE.***G.R. No. 21440. April 30, 1966*

Ponente: BAUTISTA ANGELO, J.

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Plaintiff filed before the Municipal Court of Manila a complaint based on a conditional sale of one G. P. Television Set, Model 21, Console 1960, Serial No. 652548, under the condition that the price would be P3,440.00, the down payment P884.00, and it would be paid in monthly installments of P142.00 each for 18 months. Defendant only paid the amount of P1,442.00, leaving a balance of P1,988.00, which he failed to pay since March, 1961, for which reason plaintiff prayed that if said balance is not paid, the property be returned to plaintiff.

Defendant denied owing said balance of P1,988.00 for he contends that what he bought from plaintiff was a Philco Television Set, Model 21, with a value of P1,700.00, payable within 90 days, but that it was destroyed by plaintiff's technicians and so it was replaced with a G. E. set on a cash basis, payable within 90 days, the advance payment made on the original set to be credited to the second set. It was agreed that the true market value of the G. E. set would be P1,500.00 but defendant made plaintiff sign a deed of sale for P3,440.00 thereby adding more than 150% to the original price. It is alleged that plaintiff in effect entered into a usurious transaction under the guise of a contract of sale.

Apparently, the case was elevated to the court of first instance because of the question of law involved.

The allegation of usury made by defendant in his answer was not denied under oath by plaintiff and so the court a quo considered said allegation as admitted under Section 1, Rule 9 of the Rules of Court. Hence, the court a quo considered the transaction null and void and on that basis dismissed the complaint. Plaintiff brought this case on appeal directly before this court when its motion for reconsideration was denied on the plea that the same merely involves questions of law.

Plaintiff in its complaint alleges that the transaction between the parties was a conditional sale the terms thereof having been specified therein. Defendant in his answer admits that what he originally bought from plaintiff was one Philco Television Set, Model 21, Console 1960, the terms of payment having been specified in the contract of sale. Defendant admits that he failed to pay the purchase price within the term of 90 days agreed upon.

It appears, therefore, that the transaction that took place between the parties was a conditional sale based on an installment plan, and not a loan, so that the alleged increase in the price of the article sold cannot be considered as a mere pretext to cover a usurious loan. It has been held that "The increase of the price is not interest within the purview of the Usury Law, if the sale is made in good faith and not a mere pretext to cover a usurious loan" (Manila Trading & Supply Co. vs. Tamaraw Plantation Co., 47 Phil., 513). And elaborating on said case, this Court said:

"* * * The increase of the price, when the sale is on credit, serves not only to cover the expenses generally entailed by such transactions on credit, but also to encourage cash sales, so useful to commerce. It is up to the purchaser to decide which price he prefers in making the purchase. If he prefers to purchase for cash, he obtains a 5 per cent reduction of the price, if, on the contrary, he prefers to buy on credit, he cannot complain of the increase of the price demanded by the vendor.

"In 27 R.C.L., p. 214, it is said: 'On principle and authority, the owner of the property, whether real or personal, has a perfect right to name the price on which he is willing to sell, and to refuse to accede to any other. He may offer to sell at a designated price for cash or at a much higher price on credit, and a credit sale will not constitute usury however great the difference between the two prices, unless the buying and selling was a mere pretense.' And in 39 Cyc., p. 927, it is also established that: 'A vendor may well fix upon his property one price for cash and another for credit, and the mere fact that the credit price exceeds the cash price by a greater percentage than is permitted by the usury laws is a matter of concern to the parties but not to the courts, barring evidence of bad faith. If the parties have acted in good faith such a transaction is not a loan, and not usurious.'"

Defendant's contention that the failure of plaintiff to specifically deny under oath the allegation of usury in his answer constitutes an implied admission of usury is untenable. If it is alleged that defendant entered into a contract of loan with plaintiff in which the latter collected a usurious interest there is need to deny the transaction under oath, and if no oath is taken the only thing admitted is the allegation that the interest is usurious and not that the contract entered into is a loan. The nature of the transaction is not admitted. The fact that what is alleged is that the transaction was a loan under the guise of a conditional contract of sale and that by increasing its price by 150% the consideration became usurious, such is not deemed admitted by the mere failure to deny the answer under oath. This transaction must still be proven before usury can be invoked in the light of the following ruling of this Court:

"It may, of course, be held in general that only that for which the law requires an oath is deemed admitted, should no oath be taken. If it is alleged in the complaint that the defendant, whether an individual or a corporation, has entered into a contract of loan with the plaintiff, there is no need for a sworn answer. But if it be added that on this loan the defendant has collected usurious interest, that is, interest in excess of the rate fixed by the law, then there is need of an oath. In that case, if no oath is taken to the answer, the only thing admitted is the allegation that the interest charged is usurious, not that the contract entered into is a loan, which is something that must be proved independently of the admission, especially when, as in the one in question, this allegation is disputed.

"The intervenor Hilarion Soriano not only alleges that the plaintiff charged, and that he paid him, usurious interest, but also that the contract they made, under the guise of a sale subject to repurchase, according to its terms, was in reality a contract of loan wherein usurious interest was stipulated and collected. He should therefore have shown by competent evidence that that contract was really a loan. But, not only is there not a scintilla of evidence to this effect, but, on the contrary, the evidence of record, which is the contract itself, shows conclusively that it was a sale subject to repurchase. Wherefore, as the plaintiff and the intervenor did not enter into a contract of loan by virtue of which usurious interest could be collected, and as the contract entered into between them was a sale upon which usurious interest could not be collected, the admission established by the law that such interest was in fact collected, does not exist. The law cannot presume an absurdity. In order that this admission of the collection of usurious interest may be invoked, it is necessary first to establish the contract by virtue of which such interest could be collected." (Lo Bun Chay vs. Paulino, 54 Phil., 144, 147-148).

The contract entered into between the parties being a conditional sale, the increase in price over the cash price cannot be considered interest, and so the dismissal of the case by the court *a quo* is not justified.

Wherefore, the decision appealed from is reversed. The case is remanded to the lower court for further proceedings, without pronouncement as to costs.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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